

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000655

07/30/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

KENNETH M FLINT

v.

CHERI PALOMINO

BRIAN F RUSSO

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. #1495259

Charge: DUI/ALCOHOL

DOB: 11/20/70

DOC: 10/27/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article IV, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Scottsdale City Court and the Memoranda submitted by counsel.

Appellant was arrested and charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Driving with a Blood Alcohol Content of .08 or Greater, a class 1 misdemeanor in violation of Docket Code 512

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A.R.S. Section 28-1381(A)(2); and 3 civil traffic violations, which are not the subject of this appeal. In a pre-trial evidentiary hearing, Appellant sought to suppress the results of her Intoxilyzer 5000 Breathalyzer tests and dismiss the charges against her by contending that she was denied the right to speak to an attorney before she was tested by officers. The motion was denied, and subsequently, Appellant was convicted of the charges against her.

The issue for this Court's determination is whether the trial court erred in denying Appellant's Motion to Suppress. Specifically, Appellant contends that the trial court abused its discretion by basing its ruling on the results of a preliminary breath test that did not meet the admissibility requirements, and by giving little weight to testimony that was favorable to her position. Rulings on motions to suppress evidence are reviewed under a clear abuse of discretion standard.¹ This court reviews the trial court's legal conclusions de novo, but views its factual findings regarding evidence presented at the suppression hearing in a manner most favorable to upholding the decision.²

Arizona law provides that the trial judge shall determine preliminary questions concerning the admissibility of evidence.³ If the judge is satisfied by a preponderance of the evidence that the Breathalyzer results were lawfully obtained, then the State has sustained its burden of proof and the evidence will not be suppressed.⁴ However, if the judge is not satisfied by the evidence, then the State has not met its burden and the Breathalyzer results will be suppressed.⁵

Here, the record indicates that there was substantial evidence in support of the trial judge's order denying the suppression of Appellant's breath tests. When weighing the evidence, the trial judge considered the .14 duplicate Breathalyzer readings, which were obtained in compliance with the foundational requirements set forth in A.R.S. Section 28-1323, and did not consider not the .15 preliminary reading.⁶ Thus, Appellant is misguided in her position that the trial court "relied almost exclusively on the results of the [preliminary breath test] in order to determine that Appellant was not credible and to deny the . . . Motion to Dismiss."⁷ Moreover, there is no merit in Appellant's contention that the trial judge failed to give proper weight to the evidence that favored suppression. The record clearly reflects that the trial court considered the totality of the circumstances when rendering its decision.⁸ Therefore, upon deferring to the trial court's factual findings, this Court concludes that there was no abuse of discretion for its legal conclusions.

¹ State v. Sanchez, 200 Ariz. 163, 24 P.3d 610 (App. 2001).

² Id., 200 Ariz. at 165, 24 P.3d at 612.

³ Rule 104(a), Arizona Rules of Evidence; State v. Valencia, 186 Ariz. 493, 924 P.2d 497 (App. 1996).

⁴ State v. Hyde, 186 Ariz. 252, 921 P.2d 655, cert. denied, 519 U.S. 1153, 117 S.Ct. 1091, 137 L.Ed.2d 224 (1996); State v. Hocker, 113 Ariz. 450, 556 P.2d 784 (1976).

⁵ Id.

⁶ RT p. 105, 111.

⁷ Appellant's Memo p. 5.

⁸ RT p. 87, 103-106.

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IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed by the Scottsdale City Court.

IT IS FURTHER ORDERED remanding this matter back to Scottsdale City Court for all further and future proceedings in this case.

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT